TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 206

PETER HAGAN AND EDWARD F. MARTIN, PETITIONERS,

vs.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

PETITION FOR CERTIORARI FILED DECEMBER 8, 1900.
CERTIORARI AND RETURN FILED DECEMBER 29, 1900.

(17,985.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., AUGUST 17, 1901.

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a *Transcript of Record.*

United States Circuit Court of Appeals for the Third Circuit, March Term, 1900.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, Respondents, Appellants,
vs.
PETER HAGAN and EDWARD F. MARTIN, Libellants, Appellees. } No. 6.

Appeal from the district court of the United States for the eastern district of Pennsylvania.

Filed January 16, 1900.

1 & 2 In the District Court of the United States for the Eastern District of Pennsylvania. In Admiralty.

PETER HAGAN and EDWARD F. MARTIN
vs.
THE SCOTTISH UNION AND NATIONAL INSURANCE Company. } No. 4 of 1899.

Damages—Breach of Contract of Insurance.

Pleas before the honorable the judge of the district court of the United States for the eastern district of Pennsylvania.

It is thus contained:

Be it remembered that on the 11th day of January, A. D. 1899, Horace L. Cheyney, Esq., and John F. Lewis, Esq., proctors of said court, come into court and exhibit the libel and complaint of Peter Hagan and Edward F. Martin, against The Scottish Union and National Insurance Company, in a cause of contract of insurance, civil and maritime, which being read is in the words and figures following, to wit:

3 *Libel.*

To the Honorable William Butler, judge of the district court of the United States for the eastern district of Pennsylvania, in admiralty:

The libel and complaint of Peter Hagan and Edward F. Martin against the Scottish Union & National Insurance Company, in a cause of breach of contract of marine insurance, alleges as follows:

First. That on or about December 19, 1897, the respondent, in consideration of a premium of $25, issued a policy of insurance to "Peter Hagan & Company for account of whom it may concern for the term of one year from the 19th day of November, 1897, at noon, to the 19th day of November, 1898, at noon, against all direct loss or damage by fire," except as thereinafter provided, to an amount

not exceeding $2,000, on the iron tug "Senator Penrose," her hull, tackle, apparel, engines, boilers, machinery, appurtenances, furniture and supplies. A copy of said policy is hereto attached and is made part hereof.

Second. That on December 19, 1897, the date when said policy was issued, Peter Hagan was the sole owner of said tug, and said insurance was obtained by him for the purpose of insuring the entire interest in said tug, for a period of one year.

Third. That on June 15, 1898, the said Peter Hagan sold to Edward F. Martin one-half interest in said tug "Senator Penrose," and at the time of the sale of said interest it was agreed by the said Peter Hagan and the said Edward F. Martin, that the latter should be entitled to the benefit on one-half the insurance under said
4 policy, and that he should pay his *pro rata* share of said premium on said policy from the time of the commencement of his interest until the expiration of said policy, and in accordance with said agreement the said *pro rata* share of the premium was thereupon charged to the said Martin in his accounts with the said Peter Hagan, and the payment thereof was assumed by him and he became liable for the same to the said Peter Hagan.

Fourth. That on July 30, 1897, the said steamtug "Senator Penrose" was greatly damaged by fire, which did not occur by any of the exceptions specified in said policy, and thereafter the said libellants and the adjusters representing the respondent and the underwriters upon said tug agreed upon the sum of twenty-three hundred dollars as the amount of the damage to said tug.

Fifth. That at the time of said fire on July 30, 1897, the said tug was owned by the said Peter Hagan and the said Edward F. Martin, the libellants, each being the owner of one-half part thereof.

Sixth. The said policy of insurance issued by the respondent provides, *inter alia*, "other insurance permitted without notice until required" and on July 30, 1897, at the time of the said fire, the libellants had another policy on said tug "Senator Penrose" in the National Standard Insurance Company, in the sum of one thousand dollars, said policy being similar to the one hereto attached, and under said agreement as to the amount of damage there became due by the respondent the sum of fifteen hundred and thirty-three dollars and thirty-three cents, and by the said National Standard Insurance Company the sum of seven hundred and sixty-six dollars and sixty seven cents, in all the sum of twenty-three hundred dollars—the amount of the damage agreed upon as hereinbefore stated.

Seventh. That on or about the eighth day of August, 1898, the libellants presented to the respondents proper proofs of loss under said policy, as required by the provisions thereof.

5 Eighth. That the libellants have performed all things on their part to be performed.

Ninth. That the said National Standard Insurance Company has paid the libellants its proportion of said damage or loss, yet the said Scottish Union & National Insurance Company, the respondent, has failed to pay the libellants its proportionate share of the loss sus-

tained by reason of said fire, and they therefore claim to recover from the respondent the said sum of fifteen hundred and thirty-three dollars and thirty-three cents with interest from October 8, 1898, in accordance with the terms of said policy.

All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that a citation according to the course and practice of this honorable court in causes of admiralty and maritime jurisdiction may issue to the said Scottish Union & National Insurance Company, citing and admonishing it to appear and answer all and singular the matters aforesaid; and that the court will pronounce for the damages as aforesaid with interest and costs; and will give to libellants such other and further relief as in law and justice *he* may be entitled to receive.

(Signed) HORACE L. CHEYNEY,
JOHN FREDERICK LEWIS,
Proctors for Libellants.

STATE OF PENNSYLVANIA, }
County of Philadelphia, } ss:

Peter Hagan & Edward F. Martin being duly sworn according to law, says that the facts set forth in the foregoing libel are true to the best of their knowledge, information and belief.

(S'g'd) PETER HAGAN.
EDWARD F. MARTIN.

Sworn and subscribed before me this 11th day of January A. D. 1899.

J. F. WALLACE,
[SEAL.] *Notary Public.*

6 No. 7 M. Stock. Policy.

2,139,457. $2,000.

Scottish Union & National Insurance Company.

35 St. Andrew square,
Edinburgh.
3 King William street,
London.

Martin Bennett,
manager.

United States branch,
Hartford, Conn.

James H. Brewster
ass't manager.

Established 1824.

In consideration of the stipulations herein named and of twenty-five dollars premium does insure Peter Hagan and Company for account of whom it may concern for the term of one year from the 19th day of November 1897, at noon, to the 19th day of November 1898, at noon, against all direct loss or damage by fire, except as hereinafter provided, to an amount not exceeding two thousand

dollars to the following-described property while located and contained as described herein, and not elsewhere, to wit:

On the iron tug "Senator Penrose," her hull, tackle, apparel, engines, boilers, machinery, appurtenances, furniture and supplies.

Privilege to engage in such employment as may be incidental to her trade; also to lay up and haul out on railways and dry docks and to undergo alterations and repairs; also to use kerosene oil for lights.

Other insurance permitted without notice until required.

N. Y. and Penna. standard,
Percentage coinsurance clause.

7 If at the time of fire the whole amount of insurance on the property covered by this policy shall be less than 80 per cent. of the actual cash value thereof, this company shall, in case of loss or damage, be liable for only such portion of such loss or damage as the amount insured by this policy shall bear to the said 80 per cent. of the actual cash value of such property.

Attached to policy No. 2,139,457 Scottish U. & N. Insurance Co.

S. D. HAWLEY & SON,
Agent-, Resident Managers.

This company shall not be liable beyond the actual cash value of the property at the time any loss or damage occurs, and the loss or damage shall be ascertained or estimated according to such actual cash value, with proper deduction for depreciation however caused, and shall in no event exceed what it would then cost the insured to repair or replace the same with material of like kind and quality; said ascertainment or estimate shall be made by the insured and this company, or, if they differ, then by appraisers, as hereinafter provided; and the amount of loss or damage having been thus determined, the sum for which this company is liable pursuant to this policy shall be payable sixty days after due notice, ascertainment estimate and satisfactory proof of the loss have been received by this company in accordance with the terms of this policy. It shall be optional, however, with this company to take all, or any part, of the articles at such ascertained or appraised value, and also to repair, rebuild or replace the property lost or damaged with other of like kind and quality within a reasonable time on giving notice, within thirty days after the receipt of the proof herein required, of its intention so to do; but there can be no abandonment to this company of the property described.

This entire policy shall be void if the insured has concealed or misrepresented, in writing or otherwise, any material fact or circumstance concerning this insurance or the subject thereof; or if the interest of the insured in the property be not truly stated

8 herein; or in case of any fraud or false swearing by the insured touching any matter relating to this insurance or the subject thereof, whether before or after a loss.

This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void if the insured now has

or shall hereafter make or procure any other contract of insurance, whether valid or not, on property covered in whole or in part by this policy; or if the subject of insurance be a manufacturing establishment and it be operated in whole or in part at night later than ten o'clock, or if it cease to be operated for more than ten consecutive days; or if the hazard be increased by any means within the control or knowledge of the insured; or if mechanics be employed in building, altering or repairing the within-described premises for more than fifteen days at any one time; or if the interest of the insured be other than unconditional and sole ownership; or if the subject of insurance be a building or ground not owned by the insured in fee-simple; or if the subject of insurance be personal property and be or become incumbered by a chattel mortgage; or if with the knowledge of the insured, foreclosure proceedings be commenced or notice given of sale of any property covered by this policy by virtue of any mortgage or trust deed; or if any change other than by the death of an insured, take place in the interest, title, or possession of the subject of insurance (except change of occupants without increase of hazard) whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss; or if illuminating gas or vapor be generated in the described building (or adjacent thereto) or use therein; or if (any usage or custom of trade or manufacture to the contrary notwithstanding) there be kept, used, or allowed on the above-described premises, benzine, benzole, dynamite, ether, fire-works, gasolene, greek fire, gunpowder exceeding twenty-five pounds in quantity, naphtha, nitro-glycerine or other explosives, phosphorus, or petroleum or any of its products of greater inflammability than kerosene oil of the United States standard (which last may be used for lights
9 and kept for sale according to law but in quantities not exceeding five barrels, provided it be drawn and lamps filled by daylight or at a distance not less than ten feet from artificial light); or if a building herein described, whether intended for occupancy by owner or tenant, be or become vacant or unoccupied and so remain for ten days.

The company shall not be liable for loss caused directly or indirectly by invasion, insurrection, riot, civil war or commotion or military or usurped power, or by order of any civil authority; or by theft; or by neglect of the insured to use all reasonable means to save and preserve the property at and after a fire or when the property is endangered by fire in neighboring premises; or (unless fire ensue, and, in that event, for the damage by fire only), by explosion of any kind or lightning; but liability for direct damage by lightning may be assumed by specific agreement hereon.

If a building or any part thereof fall, except as the result of fire, all insurance by this policy on such building or contents shall immediately cease.

This company shall not be liable for loss to accounts, bills, currency, deeds, evidences of debt, money, notes or securities; nor, unless liability is specifically assumed hereon, for loss to awnings, bullion, casts, curiosities, drawings, dies, implements, jewels, manu-

scripts, medals, models, patterns, pictures, scientific apparatus, signs, store or office furniture or fixtures, sculpture, tools, or property held on storage or for repairs; nor beyond the actual value destroyed by fire, for loss occasioned by ordinance or law regulating construction or repair of buildings, or by interruption of business, manufacturing processes, or otherwise; nor for any greater proportion of the value of plate glass, frescoes, and decorations than that which this policy shall bear to the whole insurance on the building described.

If an application, survey, plan or description of property be referred to in this policy it shall be a part of this contract and a warranty by the insured.

In any matter relating to this insurance no person, unless
10 duly authorized in writing, shall be deemed the agent of this company.

This policy may by a renewal be continued under the original stipulations, in consideration of premium for the renewed term, provided that any increase of hazard must be made known to this company at the time of renewal or this policy shall be void.

This policy shall be cancelled at any time at the request of the insured; or by the company by giving five days' notice of such cancellation. If this policy shall be cancelled as hereinbefore provided, or become void or cease, the premium having been actually paid, the unearned portion shall be returned on surrender of this policy or last renewal, this company retaining the customary short rate; except that when this policy is cancelled by this company by giving notice it shall retain only the *pro rata* premium.

If, with the consent of this company, an interest under this policy shall exist in favor of a mortgagee or of any person or corporation having an interest in the subject of insurance other than the interest of the insured as described herein, the conditions hereinbefore contained shall apply in the manner expressed in such provisions and conditions of insurance relating to such interest as shall be written upon, attached, or appended hereto.

If property covered by this policy is so *be* endangered by fire as to require removal to a place of safety, and is so removed, that part of this policy in excess of its proportion of any loss and of the value of property remaining in the original location, shall for the ensuing five days only, cover the property so removed in the new location; if removed to more than one location, such excess of this policy shall cover therein for such five days in the proportion that the value in any one such new location bears to the value in all such new locations; but this company shall not in any case of removal, whether to one or more locations, be liable beyond the proportion that
11 the amount hereby insured shall bear to the total insurance on the whole property at the time of fire, whether the same cover in new location or not.

If fire occur, the insured shall give immediate notice of any loss thereby in writing to this company, protect the property from further damage, forthwith separate the damaged and undamaged personal property, put it in the best possible order, make a complete inventory of the same, stating the quantity and cost of each article

and the amount claimed thereon; and, within sixty days after the fire, unless such time is extended in writing by this company, shall render a statement to this company, signed and sworn to by said insured, stating the knowledge and belief of the insured as to the time and origin of the fire; the interest of the insured and of all others in the property; the cash value of each item thereof and the amount of loss thereon; all incumbrances thereon; all other insurance, whether valid or not, covering any of said property; and a copy of all the descriptions and schedules in all policies; any changes in the title, use, occupation, location, possession, or exposures of said property, since the issuing of this policy; by whom and for what purpose any building herein described and the several parts thereof were occupied at the time of fire; and shall furnish if required verified plans and specifications of any building fixtures, or machinery, destroyed or damaged; and shall also, if required, furnish a certificate of the magistrate or notary public (not interested in the claim as a creditor or otherwise, nor related to the insured) living nearest the place of fire, stating that he has examined the circumstances and believes the insured has honestly sustained loss to the amount that such magistrate or notary public shall certify.

The insured, as often as required, shall exhibit to any person designated by this company all that remains of any property herein described, and submit to examinations under oath by any person named by this company, and subscribe the same; and, as often as required, shall produce for examination all books of account, bills, invoices, and other vouchers, or certified copies thereof if
12 originals be lost, at such reasonable place as may be designated by this company or its representative, and shall permit extracts and copies thereof to be made.

In the event of disagreement as to the amount of loss the same shall, as above provided, be ascertained by two competent and disinterested appraisers, the insured and this company each selecting one, and the two so chosen shall first select a competent and disinterested umpire; the appraisers together shall then estimate and appraise the loss, stating separately sound value and damage, and, failing to agree, shall submit their differences to the umpire; and the award in writing of any two shall determine the amount of such loss; the parties thereto shall pay the appraiser respectively selected by them, and shall bear equally the expenses of the appraisal and umpire.

This company shall not be held to have waived any provision or condition of this policy or any forfeiture thereof by any requirement, act or proceeding on its part relating to the appraisal or to any examination herein provided for; and the loss shall not become payable until sixty days after the notice, ascertainment, estimate and satisfactory proof of the loss herein required have been received by this company, including an award by appraisers when appraisal has been required.

This company shall not be liable under this policy for a greater proportion of any loss on the described property or for loss by and expense of removal from premises endangered by fire, than the

amount hereby insured shall bear to the whole insurance, whether valid or not, or by solvent or insolvent insurers, covering such property, and the extent of the application of the insurance under this policy or of the contribution to be made by this company in case of loss, may be provided for by agreement or condition written hereon or attached or appended hereto. Liability for reinsurance shall be as specifically agreed hereon.

If this company shall claim that the fire was caused by the act or neglect of any person or corporation, private or municipal,
13 this company shall, on payment of the loss, be subrogated to the extent of such payment to all right of recovery by the insured for the loss resulting therefrom, and such right shall be assigned to this company by the insured on receiving such payment.

No suit or action on this policy, for the recovery of any claim, shall be sustainable in any court of law or equity until after full compliance by the insured with all the foregoing requirements, nor unless commenced within twelve months next after the fire.

Wherever in this policy the word "insured" occurs, it shall be held to include the legal representative of the insured, and wherever the word "loss" occurs, it shall be deemed the equivalent of "loss or damage."

If this policy be made by a mutual or other company having special regulations lawfully applicable to its organization, membership, policies or contracts of insurance, such regulations shall apply to and form a part of this policy as the same may be written or printed upon, attached or appended hereto.

Provisions required by law to be stated in this policy.—It is hereby expressly provided that the capital stock and funds of the company (excluding the life assurance fund in accordance with the life assurance companies' acts of the United Kingdom), and the uncalled amount of the authorized share capital of the company of thirty million dollars, shall be liable to make good all claims under this policy, but so that no member of the company shall be liable for more than the amount of his or her share of such uncalled capital.

This policy is made and accepted subject to the foregoing stipulations and conditions, together with such other provisions, agreements or conditions as may be indorsed hereon or added hereto, and no officer, agent, or other representative of this company shall have power to waive any provision or condition of this policy except such as by the terms of this policy may be the subject of
14 agreement indorsed hereon or added hereto, and as to such provisions and conditions, no officer, agent or representative shall have such power or be deemed or held to have waived such provisions or conditions unless such waiver, if any, shall be written upon or attached hereto, nor shall any privilege or permission affecting the insurance under this policy exist or be claimed by the insured unless so written or attached.

This policy is made and accepted on the above express conditions; and in witness whereof, the undersigned being duly authorized hereunto, for and on behalf of Scottish Union & National In-

surance Company, has subscribed his name to these presents, at Hartford, to be valid, however, only when countersigned by the duly authorized agent of the company at Philadelphia.

Countersigned at 140 S. 4th St., Phila., Pa., this 19th day of November 1897.

MARTIN BENNETT,
Manager at Hartford, Conn.

S. D. HAWLEY & SON,
Agent-, Resident Managers.

15 And thereupon on the same day stipulation for costs on behalf of the libellant being entered is in the words and figures following, to wit:

UNITED STATES,
Eastern District of Pennsylvania, } ss:

On this eleventh day of January, A. D. 1899, and in the one hundred and twenty-third year of the Independence of the said United States, in open district court of the United States, personally appeared Edward F. Martin and Thomas J. Sheehan and by stipulation in due course of law acknowledged themselves to be indebted to the United States of America, for the use of all persons who may be interested in the premises, in the sum of two hundred and fifty dollars, to be levied of their and each of their goods and chattels, lands and tenements.

On condition that if the libellants in the above action, shall pay all costs which by the decree, mandate or practice of the court they may become liable to pay, then this stipulation to be void and of no effect: Otherwise to be and remain in full force and virtue, and execution to issue thereon forthwith for the amount of such costs, at the instance of any person interested as aforesaid.

EDWARD F. MARTIN. [SEAL.]
THOMAS J. SHEEHAN. [SEAL.]

Taken, acknowledged and subscribed, this 11th day of January, A. D. 1899, in open court.

CHAS. T. MURPHY,
Pro Clerk D. C.

And thereupon process of citation issues and with acceptance of service thereafter endorsed is in the words and figures following, to wit:

UNITED STATES,
Eastern District of Pennsylvania, } ss:

The President of the United States of America to the marshal of the eastern district of Pennsylvania, Greeting:

Whereas, a libel has been filed in the district court of the United States, in and for the eastern district of Pennsylvania, on the eleventh day of January, A. D. 1899, by Peter Hagan and Edward F. Martin

against the Scottish Union and National Insurance Company, in a certain action, civil and maritime, for damages for breach of contract of insurance of the tug "Senator Penrose" therein alleged to be due the said libellant, amounting to one thousand five hundred
16 and thirty-three and $\frac{33}{100}$ dollars, and praying that a citation may issue against the said defendant, pursuant to the rules and practice of this court.

Now, therefore, you are hereby commanded to cite and admonish the said defendant, if it shall be found in your district, that it be and appear before the said district court, on Friday, the 27th day of January, A. D. 1899, at ten o'clock in the forenoon of said day, then and there to answer the said libel and to make its allegations in that behalf. And have you then and there this writ.

Witness the Honorable John B. McPherson, judge of said court at Philadelphia, this eleventh day of January, A. D. 1899, and in the one hundred and twenty-third year of the Independence of the said United States.

CHARLES S. LINCOLN,
Clerk District Court.

[SEAL.]

I hereby accept service of the within writ on behalf of the respondent.

HENRY R. EDMUNDS,
Att'y for Respondent.

And afterwards, to wit, on the 4th day of March, A. D. 1899, Henry R. Edmunds, Esq., proctor as aforesaid, comes into court and exhibits the answer of the Scottish Union and National Insurance Company to the libel and complaint aforesaid and the same being filed is in the words and figures following, to wit:

In the District Court of the United States for the Eastern District of Pennsylvania. In Admiralty.

PETER HAGAN and EDWARD F. MARTIN
vs.
THE SCOTTISH UNION AND NATIONAL INSURANCE Company. } No. 4 of 1899.

To the honorable the judges of said court:

The answer of the Scottish Union and National Insurance Company to the libel and complaint of Peter Hagen and Edward F. Martin, alleges as follows:

17 First. That the said respondent admits *that* the allegations of the first paragraph of said libel to be true.

Second. This respondent admits the issuance of the policies to Peter Hagan as set out in the said second paragraph of said libel, but whether the said policy was for the purpose of insuring the entire interest in said tug this respondent is not now informed and asks to have the same proven if material.

Third. This respondent has no knowledge of the truth or falsity

of the allegations of the third paragraph of the said libel and asks to have the same proven if material.

Fourth. The respondent further avers and says that the facts set forth in the fourth paragraph of said libel are true as this respondent believes.

Fifth. The respondent answering the fifth paragraph of said libel alleges that he has no certain knowledge of the facts therein related, that the respondent company had no notice of any transfer or sale to Edward F. Martin of any portion of said tug at any time before said fire.

Sixth. The respondent in answer to the sixth paragraph of said libel alleges that he believes the same to be true as therein stated.

Seventh. The respondent admits the allegations of the seventh paragraph of said libel.

Eighth. Respondent denies the allegations set forth in the eighth paragraph of said libel and alleges that the libellants have not performed all things on their part required to be performed by the terms of the insurance in that no notice was given of the change of ownership or of the interest in the said tug by the respective libellants as required by the terms of the policy.

Ninth. That it is true as is alleged in the ninth article of said libel that this respondent company has not paid to libellants the sum of money therein claimed. The respondents alleging and claiming that they are advised that they are in no respects responsible to libellants, the ownership of the tug not being at the time of the loss the interest insured against and they the respondent corporation not having had any notice of any change therein.

That all and singular the premises are true, whereof respondent corporation prays to be hence dismissed with *his* reasonable costs.

SCOTTISH UNION AND NATIONAL INSURANCE CO. OF EDINBURGH, SCOTLAND.
S. D. HAWLEY & SON, *Agents.*

18 STATE OF PENNSYLVANIA, }
City and County of Philadelphia, } *ss:*

Warren A. Hawley, of the firm Sam'l D. Hawley & Son, agents of The Scottish Union and National Insurance Company *of* respondent corporation, being duly sworn according to law deposes and says, that the facts set forth in the above and foregoing answer are true to the best of his knowledge, information and belief.

WARREN A. HAWLEY.

Sworn and subscribed to before me this 3d day of March, A. D. 1899.

H. F. REARDON,
[SEAL.] *Notary Public.*

And afterwards, on the 6th day of October, A. D. 1899, the cause comes on to be heard on libel, answer and proofs, and statements of facts and conclusions of law on behalf of the respective parties are

presented and read, but those of the respondent alone being filed are in the words and figures following, to wit:

In the District Court of the United States for the Eastern District of Pennsylvania. In Admiralty.

PETER HAGAN and EDWARD F. MARTIN
vs.
THE SCOTTISH UNION AND NATIONAL INSURANCE Company. } No. 4 of 1899.

Statement of Facts on Behalf of Respondent.

On the nineteenth day of December, 1897, the respondent company issued to Peter Hagan and Company for account of whom it may concern, a policy of insurance against fire on the tugboat "Senator Penrose." A correct copy of said policy is annexed to the libel and made part thereof.

On the fifteenth day of June, 1898, Peter Hagan, who with his son, comprised the firm of Peter Hagan & Company, sold one-half of said steamtug to Edward F. Martin, the other libellant.

19 No notice of this sale and transfer was given to the respondent company nor had it any knowledge of the same.

It is provided by the terms of said policy, among other things, that, "if the interest of the insured be other than unconditional and sole ownership," or "if any change other than by death of the insured take place in the interest, title or possession of the subject of insurance * * * whether by legal process or judgment or by voluntary act of the insured, or otherwise, or if this policy be assigned before the loss," the entire policy shall be void.

The libellants claim that the words "for whom it may concern" entitles them to recover.

The respondent contends that the words "for whom it may concern," can and do only mean, for whom it concerned at the time of making the insurance.

Conclusions of Law.

It was decided in De Bolle *vs.* The Pennsylvania Ins. Co., reported in 4th Wharton, page 63, that:

"No one can claim the benefit of an insurance made by another for account of whom it may concern without showing that it was the intention of the person obtaining the insurance to embrace his interest in the goods at the time of the insurance."

And in Fire Association *vs.* Merchants' and Miners' Transportation Company, reported in 7th Atlantic Reporter, page 905, the court of appeals of Maryland, say:

"That any one having title to the property at the time of the loss may by adoption of the contract avail himself of its advantages provided that it be shown that his interest was within the contemplation of the party procuring the insurance."

And in the case of Mosser *vs.* Donaldson, 10th Atlantic Rep., page 766, in which a builder and a land-owner entered into a contract*ion* for the erection of a building it being provided that the builder should keep the building insured "for the benefit of whom it may concern," it was held that the expression "for the benefit of whom it may concern," applied only to the parties to the contract.

See also cases cited in Encyclopedia of Law, vol. VIII, pp. 87 and 88, 1st edition.

It has also been decided in a multitude of cases, that any change in the ownership or title of the property insured, makes the insurance and policy void.

In the case at bar the possession of the tug was also changed, Martin taking possession as master.

Sherwood *vs.* Agricultural Ins. Co., 73 N. Y., 447.
Hine *vs.* Woolworth, 95 N. Y., 75.
20 Smith *vs.* Phœnix Ins. Co., 23 Pac. R., 333.
Fire Ass'n *vs.* Flournoy, 19 S. W. Rep., 793.
Tollman *vs.* Atlantic Fire and Marine, 29 How., 71 N. Y.
Abbott *vs.* Hamden Ins. Co., 30 Maine, 44.

In the present case there was no assignment of the policy and no assent of the company and no notice to it of any transfer of a partial interest.

In Schroedel *vs.* Humboldt Fire Insurance Co., 27 Atl. Rep., p. 1077 (S. C. of Penna.) it was said:

"A condition in a fire-insurance policy that it shall be void, if the interest of the insured be not truly stated therein, or if the interest in the insured be other than the unconditional and sole ownership," precludes a recovery where the title to the property is in the insured and his wife jointly.

Oldham *vs.* Anchor Mutual Fire Ins. Co., 57 N. W. Rep. (Feb. 24, 1894), p. 861:

"Where a policy on property used and owned by a partnership runs to the partners jointly, a condition that the property shall not be sold or transferred, or any change take place in the title or possession, is broken if two of the partners sell and deliver their interest to the other partner, and the latter cannot recover to the extent of his original interest."

And on the same day depositions on behalf of the libellant being present-, read, and filed, are in the words and figures following, to wit:

21 *Depositions.*

Deposition taken in behalf of the libellants at the offices of Messrs. Lewis and Cheyney, room 348–349 Bourse building, Philadelphia, on Friday, March 10, 1899, at 3.30 p. m.

Present: Horace L. Cheyney, Esq., for the libellant; Henry R Edmunds, Esq., for the respondent.

DAVID P. BILLINGTON, being duly sworn according to law, was examined as follows:

By Mr. CHEYNEY:

Q. Mr. Billington, what is your business?
A. Insurance broker.
Q. How long have you been engaged in that business?
A. On my own account?
Q. On your own account or otherwise?
A. 12 years.
Q. How long have you been on your own account?
A. Two years and two months.
Q. With whom were you connected before that time?
A. Mather & Company.
Q. What class of business have you transacted during that time, marine business or general business?
A. General business, mostly fire and marine.
Q. What kind of business does Mather & Company transact?
A. General business, fire and marine.
Q. Have they a large marine business?
A. Very large.
Q. Probably as large as any marine business of any firm in the city?
A. I don't think there is any doubt about that.
Q. Did you have anything to do with the insurance issued to Peter Hagan & Company for account of whom it may concern
22 upon the tug "Senator Penrose" by the Scottish Union & National Insurance Company, in the month of November, 1897?
A. Yes, sir; I placed the insurance with that company for Mr. Hagan's account, by Mr. Hagan's orders.
Q. Had you placed other policies for that company, the Scottish Union?
A. Yes, sir.
Q. On this character of property?
A. Yes, sir.
Q. You were acting as broker for Mr. Hagan, I suppose?
A. Yes, sir.
Q. Do you remember what insurance you applied for for account of whom it may concern?

(Objected to by Mr. Edmunds, as the application is in writing.)

(Mr. Cheyney, replying, calls upon Mr. Edmunds to produce the application.)

A. Yes, sir, Peter Hagan & Company.

Q. I mean so far as the tug is concerned, what portion of the boat, or was it the whole of the boat?

A. The whole boat.

Q. So far as you remember, did the Scottish Union Insurance Company ask for any information as to the persons intended to be covered by this policy under the clause for account of whom it may concern?

A. No, sir.

Q. The policy was actually issued upon the application?

A. Yes, sir; precisely as per the form drawn by me.

Q. Do you know whether this is the policy which was issued or not?

A. Yes, sir; that is the policy.

(Policy marked "Libellant's Exhibit No. 1, March 10, 1899, W. H. S., Jr.," and offered in evidence.)

Q. At the time Mr. Hagan ordered you to apply for this insurance did he state the interest that he desired insured?

(Mr. Edmunds objects; the application will show.)

23 Q. What instruction did Hagan give you as to the interest to be insured?

(Objected to by Mr. Edmunds as immaterial.)

A. He told us to insure the tug "Senator Penrose" in the name of Peter Hagan & Company for account of whom it may concern.

Q. Do you know whether during the time this policy was in force any sale of interests took place in the "Senator Penrose"?

A. Yes, sir.

Q. What sale took place, if any?

(Objected to by Mr. Edmunds, unless he knows of his own knowledge.)

A. I saw the bill of sale for a half interest in the tug from Peter Hagan to Edward F. Martin.

(Mr. Edmunds calls for the bill of sale.)

Q. Did they consult with you as to the insurance?

(Objected to by Mr. Edmunds as immaterial and irrelevant.)

A. Yes, sir.

Q. Who consulted with you about it?

(Objected to by Mr. Edmunds as immaterial and irrelevant.)

A. Peter Hagan.

Q. I wish you would state what was said by you or by Mr. Hagan.

(Objected to by Mr. Edmunds.)

A. Peter Hagan told me that he had sold a half interest in the

tug "Senator Penrose" to Edward F. Martin, and asked me whether I thought it was necessary that it should be noted on the policy. He said that he did not think so. I agreed with him. He asked me how this other policy was covered, and I told him for account of whom it may concern. I told him I thought everything was perfectly in order; nothing further was done.

24 Q. Did you see any of the underwriters upon the tug "Senator Penrose" as to whether it was necessary to note this change?

(Objected to by Mr. Edmunds as immaterial.)

A. I saw the Marine Insurance Company; I happened to meet one of the men from the office, and he said it was not necessary.

(Objected to by Mr. Edmunds.)

Q. Who were the marine insurers?

A. Mather & Company.

Q. Now, Mr. Billington, you have stated that in your opinion it was not necessary that this change of interest should be noted upon that policy? Will you kindly state why you so stated?

(Objected to by Mr. Edmunds as immaterial and irrelevant.)

A. I was simply following out the custom I had been taught, and as it was the custom on the street.

Q. What is the custom on the street?

A. The general understanding of that phrase for account of whom it may concern.

Q. What is the general understanding?

(Objected to by Mr. Edmunds.)

A. On the street the general understanding is that it covers the interest of the owners, no matter when they acquire an interest in the property, and no matter whether at the time it is issued or subsequently.

Q. When you used the expression "on the street," what do you mean by that?

A. Among the insurance people, the insurance offices.

Q. From your experience, as a broker, do you say that is the commonly accepted meaning of that term?

(Objected to by Mr. Edmunds.)

25 A. Yes, sir.

Q. In insurance circles?

(Objected to by Mr. Edmunds.)

A. Yes, sir.

Q. At the time that you effected this insurance was this the only policy which you procured or did you procure other insurance?

(Objected to by Mr. Edmunds.)

A. Two policies I procured.

Q. What was the other?

A. The National Standard Insurance Company of New York.
Q. Do you remember the amount of the policies issued by these two companies?
A. Yes, sir, the Scottish Union was for $2,000 and the National Standard was for $1,000.
Q. Did you prepare the proofs of loss in this case?
A. Yes, sir.
Q. What was done with those proofs of loss, do you know?
A. The proofs for the National Standard Insurance Company were taken to New York by the adjuster of that company.
Q. Who was the adjuster?
A. Captain A. McKenzie. The proofs for the Scottish Union were handed to Mr. Nelson, representing the Scottish Union and National Insurance Company.
Q. Is that a copy of the proofs of loss?
A. Yes, sir.
Q. I see in this proof of loss there is a sum of $2,300—a compromise settlement. Do you know how those figures were arrived at?

(Objected to by Mr. Edmunds as immaterial.)

A. By compromise between Nelson and McKenzie, repre-
26 senting the underwriters, and Peter Hagan, the owners of the boat.

Q. Do you know as a matter of fact, of your own knowledge, Mr. Billington, whether there was any loss by fire upon the tug "Senator Penrose" during the life of this policy?
A. Yes, sir.
Q. Do you remember the date of the fire?
A. I think it was about July 5th. I have it in my books some place.
Q. Do you know, as a matter of fact, whether any of the insurance upon this tug has been paid or not?

(Objected to by Mr. Edmunds as immaterial.)

A. Yes, sir.
Q. What portion has been paid?
A. The National Standard for $1,000, has been paid.
Q. Do you know where that policy of the National Standard Company is?
A. Surrendered to the company.
Q. How did it compare so far as the form is concerned to the policy issued by the Scottish Union?

(Objected to by Mr. Edmunds.)

A. Exactly the same.

Cross-examination.

By Mr. Edmunds:

X Q. How old are you, Mr. Billington?
A. Twenty-nine last November.

X Q. You have been a broker on your own account for two years?
A. Two years and two months.
X Q. Did you see this boat burnt up?
A. No, sir.
X Q. Did you see her after she was burned?
A. Yes, sir.
X Q. How long afterwards?
A. Probably three months. It was not necessary for me
27 to see her. I didn't think it was necessary for me to see her.
X Q. No; yet you swear that she was burned up during the life of this policy?
A. Yes, sir.
X Q. You swear that, not from your own knowledge, but from information derived from others?
A. Yes, sir; that is right.
X Q. Then the exact fact is that you don't know whether she was burned or not during the life of this policy, except what you have heard?
A. No, sir; the boat must have been burned during the life of that policy, because I feel certain that the policy was then in force.
X Q. And that was three months after the alleged fire?
A. Yes, sir.
X Q. Now, you have no knowledge of her being burnt, except what you have heard from others?
A. Yes, sir; sworn to.
X Q. And most all you have testified to has been testified from information which you derived from other people, is that not so?
A. In regard to the burning of the boat?
X Q. And anything that you have testified to?
A. No, sir; not about the custom on the street.
X Q. The custom on the street is not of your own knowledge, but from your general experience?
A. From actual experience and from observation.
X Q. The facts are that Mr. Hagan spoke to you about having this change of ownership noted on the policy and you thought and you told him that it was not necessary?
A. He said he did not think it was necessary.
X Q. And you told him that you didn't think it was necessary?
A. I said I agreed with him.
X Q. And accordingly with your advice there was no alteration made in the policy?
A. Precisely.
28 X Q. Do you remember the date of this bill of sale that you are speaking about?
A. No, sir; I cannot remember that.
X Q. Who drew it?
A. I think it was drawn up at the custom-house. I didn't examine it carefully. I just noticed the name.
X Q. Now you have been in the marine business a long while.

Did you ever know of a bill of sale to be drawn at the custom-house?

A. I take that back. That was drawn up by Bailey. I was thinking of the enrollment papers.

X Q. What did you do with the proofs of loss against the Scottish Union?

A. As is usual with brokers——

X Q. What did you do with them?

A. We prepared these proofs.

X Q. What did you do with them?

A. The Scottish Union proof was handed to Mr. Nelson.

(Signature waived.)

29 Depositions taken in behalf of the libellant at the office of Messrs. Lewis and Cheyney, 348 Bourse building, Philadelphia, on Monday, March 27, 1899, at 3 p. m.

Present: Horace L. Cheyney, Esq., for the libellant; Henry R. Edmunds, Esq., for the respondent.

PETER HAGAN, being duly sworn according to law, was examined as follows:

By Mr. CHEYNEY:

Q. You were the owner of the tug "Senator Penrose" in the early part of last year when a policy was taken out in the Scottish Union Insurance Company?

A. Yes, sir.

Q. You sold a half interest in that tug to Edward F. Martin in June?

A. Yes, sir.

Q. At the time of the sale to Mr. Martin, was there any agreements between you and Mr. Martin as to the policies which were in force covering the tug?

(Objected to by Mr. Edmunds.)

A. Yes, sir; I sold the tug. He was to go on her and pay me so much for the half of her, and pay me for half of the policies, half of the insurance.

Q. That is, for the policies which were standing out on her?

A. Yes, sir; and some other little bills that he was to pay a portion of. What they are I cannot tell. When I sold this boat I gave the policies to the agent, David Billington, and he fetched it back and said it was all right, it didn't require any more endorsements on it.

(Objected to by Mr. Edmunds.)

30 Cross-examination.

By Mr. EDMUNDS:

X Q. Mr. Hagan, Martin you say was to sail this vessel as master?

A. Yes, sir; that is the reason I sold it to him.

X Q. And he was not to have this interest at all unless he would go as master?

A. Yes, sir; he paid for her; paid me a portion of it in money, and I have taken his note for the balance. I had taken something like a thousand dollars.

X Q. How much did he pay for it in cash?

A. I don't recollect now. I think it was something like $1,750 or $1,700.

X Q. Was that all in cash?

A. No, sir; he gave me two notes, I think $250 apiece.

X Q. The rest of it in cash, was it?

A. Yes, sir.

X Q. Don't that show on your books?

(Objected to by Mr. Cheyney as immaterial.)

A. I don't think that it does, because it was kind of a private affair. My son owned this boat and went away from me at this time, and I had to send to get this boat back again in my name.

X Q. Your son was the real owner of the boat?

A. I put her in his name when I bought the boat, but he didn't own any money at that time. He left and went away from here, and then I got him to transfer this boat and then I sold this interest in the boat to Martin.

X Q. Did he transfer it back to you after the time you sold to Martin?

A. No, sir; before that.

X Q. How long?

A. Four or five months before that, and I did not want him to know what I sold it for.

X Q. Well, your son transferred the boat back to you, and you got the insurance in the first instance?

31 A. No, there was no insurance on her, I don't think, before.

X Q. Can you give me the date of the transfer of the boat to you?

A. Only by the man who put it through the custom-house.

X Q. Well, there was a bill of sale from your son to you?

A. Yes, sir; Mr. Bailey attended to that end, and he done that, but there was no insurance on her at that time.

X Q. That is your recollection of it?

A. I am satisfied that there was not; I feel satisfied that there was no insurance on her, because I put the insurance on the boat.

X Q. Well, you got this insurance issued in the name of Peter Hagan & Company; who is the company?

A. There ain't no company; he was supposed to be the company at that time.

X Q. That is, your son was supposed to be?

A. Yes, sir.

(Signature waived.)

EDWARD F. MARTIN, being duly sworn according to law, was examined as follows:

By Mr. CHEYNEY:

Q. What is your business?

A. Following the water; mariner.

Q. Please state whether in the month of July, 1898, you owned any share in the tug "Senator Penrose"?

A. Yes, sir.

Q. What share did you own?

A. Own one-half, sir.

Q. When did you purchase that?

A. The thirteenth day of June, I think it was, last.

Q. From whom did you purchase that?

32 A. From Peter Hagan & Company.

Q. You say a half interest?

A. Yes, sir.

Q. At the time you purchased that interest, please state whether there was any agreement between you and Mr. Hagan in reference to the policies of insurance covering that boat?

(The form of the question is objected to by Mr. Edmunds.)

A. Well, yes, sir; there was an agreement or understanding that I was to pay just what was due, premium that was not run out, and I had the same privileges of the insurance policies as he would have. That was the understanding.

(Objected to by Mr. Edmunds.)

Q. You went on the boat as master afterwards, did you?

A. Yes, sir.

Cross-examination.

By Mr. EDMUNDS:

X Q. Did you pay cash or notes?

A. I paid part cash and part notes.

X Q. How much cash did you pay?

A. I paid $1,200 cash, and $500 in notes.

(Signature waived.)

33 And afterwards, on the 16th day of November, A. D. 1899, the opinion of the court being filed is in the words and figures following, to wit:

In the District Court of the United States for the Eastern District of Pennsylvania. In Admiralty.

PETER HAGAN and EDWARD F. MARTIN
vs.
THE SCOTTISH UNION AND NATIONAL INSURANCE Company. } No. 4 of 1899.

McPHERSON, *J.:*

In December, 1897, Peter Hagan, who was then the sole owner of the tugboat Senator Penrose, took out a fire policy for one year in the respondent company, insuring Peter Hagan & Company, "for account of whom it may concern," to an amount not exceeding $2,000, "on the iron tug Senator Penrose, her hull, tackle, apparel, engines, boilers, machinery, appurtenances, furniture and supplies." Among the printed provisions of the policy, it is declared that the contract shall be void "if the interest of the insured be other than unconditional and sole ownership," or "if any change other than by the death of an insured, take place in the interest, title or possession of the subject of insurance whether by legal process, or judgment, or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss." In June, 1898, Hagan sold a half interest in the tug to Martin, but did not notify the company of the sale, or obtain its consent thereto. There was some discussion between Hagan and Martin concerning the effect of the sale upon the policy, and they took the advice of an insurance broker upon the subject, coming finally to the conclusion that the clause "for whom it may concern" was sufficient to protect the interest of Martin without further action. The sale included a half interest in the policy, and Martin accounted to Hagan for the proper share of the premium for the unexpired term.

In the month of July the boat was destroyed by fire. Proofs of loss were made, but the company refused to pay upon the ground that under the foregoing provisions of the policy the sale to Martin had made the contract void.

The decision of the case depends upon the effect to be given to the words, "for whom it may concern." This clause, so far as it may be in conflict with other language in the policy, must, upon
34 familiar principles, be regarded as dominant. It expresses the special agreement of the parties for it is in writing, while the conflicting provisions are in print; and general printed conditions usually give way to deliberately chosen written words. Moreover, even if the court doubted which provision should prevail, another well-known rule requires the policy to be construed against the company rather than against the insured; and, therefore, upon either ground, the clause now under consideration is controlling.

The effect to be given to it seems to be well settled. The Supreme Court in Hooper *vs.* Robinson, 98 U. S., 528, states it in this language:

"A policy like the one here in question, in the name of a specified

party 'on account of whom it may concern,' or with other equivalent terms, will be applied to the interest of the persons for whom it was intended by the person who ordered it provided the latter had the requisite authority from the former, or they subsequently adopted it."

1 Phillips, Ins., sect. 383.

"This is the result though those so intended are not known to the broker who procures the policy, or to the underwriters who are bound by it."

Id., sect. 384.

"One may become a party to an insurance effected in terms applicable to his interest, without previous authority from him, by adopting it either before or after the loss has taken place, though the loss may have happened before the insurance was made."

Id., sect. 388.

"The adoption of the policy need not be in any particular form. Anything which clearly evinces such purpose is sufficient."

The first step, therefore, in a given case is to determine what interest the person taking out the policy intended to protect. It is not essential that he should have had any specific individual in mind. It is enough if he intended to protect the interest that afterwards passed to the person injured; and if he so intended, the policy may be adopted afterwards by a subsequent sole or partial owner of the interest although such owner may have been unknown to the person taking out the insurance, or to the company, at the time the policy was written.

In the present case, I have no doubt (and I find the fact to be) that Hagan intended to insure, and to keep insured for one year, the entire title to the boat. He did not intend merely to protect such interest as he himself might have from time to time. If this had been his object the policy would more naturally have been taken out in his own name, omitting the qualifying phrase; but he intended to protect the ownership of the boat, whether vested in
35 himself alone, or shared with, or transferred to, other persons. This being his intention, and Martin having afterwards adopted the policy by the agreement of sale and by accounting for a proper share of the premium, I think no further difficulty exists. The facts bring the dispute within the rule laid down in Hooper *vs.* Robinson, and in other cases to which reference need not be made. In Mosser *vs.* Donaldson, 9 Cent. Rep. 153, S. C. 10 Atlan. Rep., 766, cited by the respondent, it clearly appeared that the parties intended that two persons only should have the benefit of a similar phrase, and this is the ground upon which a third person was denied the right to share in its protection. I do not think that the decision of the Maryland court of appeals in Fire Insurance Association *vs.* Merchants' Transportation Co., 7 Atlan. Rep., 905, is in conflict with the rule stated by the Supreme Court of the United States, but if there is a conflict, my duty is plain.

A decree will be entered in favor of the libellant for $1,533.33, with interest from October 8, 1898, and costs.

And afterwards, to wit, on the 17th day of November, A. D. 1899, decree being entered is in the words and figures following, to wit:

In the District Court of the United States for the Eastern District of Pennsylvania. In Admiralty.

PETER HAGAN and EDWARD F. MARTIN,
vs.
THE SCOTTISH UNION AND NATIONAL INSURANCE Company. } No. 4 of 1899.

And now, November 17, 1899, the above case having been heard upon the pleadings and depositions and arguments of proctors for the respective parties thereon, it is ordered and decreed that the libel be sustained and that Peter Hagan and Edward F. Martin, the libellants shall recover from The Scottish Union and National Insurance Company, the respondent, the sum of $1,635.27, being the sum of $1,533.33, the amount claimed in the libel with interest thereon to date.

And afterwards, on the 24th day of November, A. D. 1899, the respondent, The Scottish Union and National Insurance Com-
36 pany, by their proctor aforesaid, present a petition for leave to appeal from the decree in this cause to the next United States court of appeals for the third circuit, with an assignment of errors and prayer for reversal, and the same being allowed and filed is in the words and figures following, to wit:

To the Honorable John B. McPherson, judge of the district court of the United States in and for the eastern district of Pennsylvania:

The petition of the Scottish Union and National Insurance Company, respectfully represents:

1. That Peter Hagan and Edward F. Martin filed a libel in your honorable court, No. 4 of 1899, against your petitioner, The Scottish Union and National Insurance Company, to recover the sum of $1,533.33, together with interest from October 8, 1898, alleged to be due the libellants under the terms of — certain policy of insurance fully set forth in said libel.

That an answer was filed to said libel and evidence taken in behalf of libellants. The respondent, your petitioners, took no evidence, claiming that the libel and libellants' evidence made out no cause of action and that the libel should be dismissed.

2. That the cause came on to be heard before your honorable court and a decree was subsequently, to wit, on the seventeenth day of November, A. D. 1899, *a decree was* entered in favor of said libellants for the full amount of their said claim as aforesaid, with interest from the eighth day of October, A. D. 1898 and costs of suit.

Your petitioners are advised and believe that the said decree is erroneous and that a decree should rightfully have been ent-red dismissing the said libel.

Therefore your petitioners pray that they may be allowed to appeal from said decree to the next term of the circuit court of appeals of the United States for the third circuit and that said decree be reversed and a decree entered in favor of your petitioner- dismissing the libel aforesaid.

SCOTTISH UNION AND NAT'L INS. CO.,,
By S. D. HAWLEY & SON,
Resident Manager-.

EASTERN DISTRICT OF PENNSYLVANIA:

John C. Mellor, a member of the firm of S. D. Hawley & Son, being duly sworn according to law deposes and says, that he is the resident agent of The Scottish Union and National Insurance
37 Company, the above-named petitioners, and that the facts set forth in the foregoing petition are true and he verily believes that this appeal is not taken for delay.

JNO. C. MELLOR,
Of and for S. D. Hawley & Son, Resident Managers.
JNO. C. MELLOR.

Sworn and subscribed before me this 24th day of November, A. D. 1899.

H. F. REARDON,
[SEAL.] *Notary Public.*

In the District Court of the United States for the Eastern District of Pennsylvania. In Admiralty.

PETER HAGAN and EDWARD F. MARTIN
vs.
THE SCOTTISH UNION AND NATIONAL INSURANCE Company.
} No. 4 of 1899.

Assignments of Error.

1. The learned judge of the district court erred in holding that it was not essential the person taking out the policy should have any specific individual in mind. That it was enough if he intended to protect the interest that afterward passed to the person injured, and that if he so intended the policy may be adopted afterwards by a subsequent sale or partial owner of the interest, although such owner may have been unknown to the person taking out the insurance or to the company at the time the policy was written.

2. The learned judge of the district court erred in holding that Hagan intended to protect the ownership of the boat whether vested in himself alone or shared with or transferred to other persons.

3. The learned judge of the district court erred in holding that the facts brought the dispute within the rule laid down in Hooper *vs.* Robinson.

4. The learned judge of the district court erred in sustaining the libel.

5. The learned judge of the district court erred in directing a decree to be entered in favor of the libellant.

38 6. The learned judge of the district court erred in directing a decree for libellant in the sum of $1,533.33 with interest from October 8, 1898.

7. The learned judge of the district court erred in not directing a decree dismissing the libel.

HENRY R. EDMUNDS,
Proctor for Petitioner.

Know all men by these presents, that the "American Surety Company of New York" (office 102 Bullitt building) in the city of Philadelphia, and State of Pennsylvania, is held and firmly bound unto Peter Hagan and Edward F. Martin, in the sum of two thousand dollars, lawful money of the United States, to be paid to the said Peter Hagan and Edward F. Martin, to which payment well and truly to be made the said The "American Surety Company of New York" binds itself and its successors firmly by these presents, sealed with its seal and dated at Philadelphia, this sixth day of December, A. D. one thousand eight hundred and ninety-nine.

Whereas, the "Scottish Union and National Insurance Company" has lately appealed to the United States circuit court of appeals in the third circuit from the decree of the Honorable John B. McPherson, judge of the district court of the United States, for the eastern district of Pennsylvania, made and pronounced in a certain plea civil and maritime for damages for breach of contract therein lately depending between the said Peter Hagan and Edward F. Martin, libellants, appellees, and The "Scottish Union and National Insurance Company," respondents, appellants.

Now, if the said appellants shall prosecute their appeal to effect and answer all damages and costs if they fail to make their plea good, then this stipulation shall be void, otherwise to be and remain in full force and virtue.

AMERICAN SURETY CO. OF N. Y. [SEAL.]
SAM'L T. FREEMAN, *Res't. Vice-Pres.* [SEAL.]
Attest: F. H. WILLIAMS, *Res Ass't Sec'y.* [SEAL.]

Taken and subscribed before me this sixth day of December, A. D. 1899.

WM. W. CRAIG,
Dep'y Clerk.

Sealed and delivered in the presence of us:
WM. W. CRAIG.
CHARLES S. LINCOLN.

39 & 40 UNITED STATES OF AMERICA, } ss:
Eastern District of Pennsylvania, }

I, Charles S. Lincoln, clerk of the district court of the United States, for the eastern district of Pennsylvania, do hereby certify

the foregoing to be a true and faithful copy of the record and proceedings of the said district court in a certain plea, civil and maritime, for damages from breach of contract of insurance, therein lately depending wherein Peter Hagan and Edward F. Martin are the libellants against The "Scottish Union and National Insurance Company," respondent.

In testimony whereof I have hereunto subscribed my name and affixed the seal of said court at Philadelphia this twelfth day of January, A. D. 1900, and in the one hundred and twenty-fourth year of the Independence of the United States.

WM. W. CRAIG,
Dep'y Clerk, District Court.

41 In the United States Circuit Court of Appeals for the Third Circuit.

And afterwards to wit: on the twelfth day of March A. D. 1900, this cause being called for argument on the transcript of record from the district court of the United States for the eastern district of Pennsylvania, before Hon. M. W. Acheson, Hon. George M. Dallas, and Hon. George Gray, circuit judges, and being argued by counsel for the respective parties, and the court not being fully advised in the premises takes further time for consideration thereof.

And afterwards to wit, on the first day of June A. D. 1900 comes the parties aforesaid by their counsel aforesaid and the court now being fully advised in the premises renders the following opinion, to wit:

42 In the United States Circuit Court of Appeals for the Third Circuit, March Term, 1900.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY
vs.
PETER HAGAN and EDWARD F. MARTIN. } No. 6.

Before Acheson, Dallas, and Gray, circuit judges.

DALLAS, *J.:*

By the libel in this case the appellees, Peter Hagan and Edward F. Martin, claimed to recover from the appellant, The Scottish Union and National Insurance Company, upon a fire policy on a tugboat, insuring Peter Hagan and Company, for account of whom it may concern. The court below entered a decree for the libellants, and thereupon the insurance company appealed.

The policy provided that it should be entirely void "if the interest of the insured be other than unconditional or sole ownership, * * * or if any change other than by the death of an insured, take place in the interest, title or possession of the subject of insurance, * * * whether by legal process or judgment or by voluntary act of the insured, or otherwise; or if this policy be assigned before a loss." A

change did take place in the interest, title and possession of the boat, for Hagan, during the life of the policy and before loss, sold a one-half interest therein (including a half interest in the policy) to Martin, and Martin became master of the boat. The company had no knowledge of this transaction, and of course did not consent to it. Soon thereafter the boat was destroyed by fire, and, the company having refused to pay, Hagan and Martin filed this libel, alleging that at the time of the fire, each of them was the owner of one-half part of the tug. Were they entitled to recover? They certainly were not,
43 unless the provisions of the policy which have been referred to were superseded and wholly set aside by the words "for account of whom it may concern," and, in our opinion, they were not. It is true that the written terms of a policy will control where they are in plain conflict with its printed clauses; but no part of the instrument is to be rejected if it can be sustained as a whole, and in the present instance the printed provisions in question and the written words "for account of whom it may concern" are not irreconcilably repugnant. That the policy was issued for account of whom it migh- concern is undeniable, but whom could it concern? Possibly, the then existing or future creditors of the boat, or, perhaps, the constituents of Peter Hagan and Company; but, no matter for whose account the insurance may have been effected, it cannot be supposed that it was taken for the benefit of any one who, by the express, though printed, terms of the contract, was distinctly excluded from having or acquiring any interest under it.

It is not necessary to our conclusion that we should question the rule of law which was applied by the court below, and we do not do so. It is not doubted that a policy in the name of a special party, on account of whom it may concern, will cover the interest of the person for whom it was intended by the party who ordered it, although the particular person intended was not known; but we find nothing in this case to support a finding that Hagan intended to insure a subsequent vendee of the boat or of an interest therein. On the contrary, we think, as we have already said, that the retention in the policy of the provision that it should be entirely void if any transfer in interest, title or possession should be made, absolutely precludes the inference of an intent to make the policy applicable to any person claiming under or by virtue of such a transfer. Stipulations of this sort are of no little importance. It is -anifest
44 that insurers regard them as quite material, and the courts, we think, should not hesitate to enforce them wherever it is reasonably possible to give them effect.

Schroedel *v.* Ins. Co., 158 Pa. St., 459; Oldham *v.* Ins. Co., 57 N. W. Rep., 861.

The decree of the district court is reversed, and the case will be remanded to that court with direction to enter a decree dismissing the libel with costs.

Filed June 1, 1900.

45 United States Circuit Court of Appeals for the Third Circuit
March Term, 1900.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, Appellant,
v.
PETER HAGAN and EDWARD F. MARTIN. } No. 5.

Appeal from the district court of the United States for the eastern district of Pennsylvania.

This cause came on to be heard on the transcript of record from the district court of the United States for the eastern district of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said district court in this cause, be, and the same is hereby reversed with costs.

And it is further ordered that this cause be remanded to the said district court with directions to enter a decree dismissing the libel with costs.

Philadelphia, June 12, 1900.

GEO. M. DALLAS, *J.*

46 United States Circuit Court of Appeals for the Third Circuit,
March Term, 1900.

THE SCOTTISH UNION AND NATIONAL INSURANCE COMPANY, Appellant,
v.
PETER HAGAN and EDWARD F. MARTIN. } No. 5.

Appeal from the district court of the United States for the eastern district of Pennsylvania.

And now to wit this 2nd day of July A. D. 1900, it is ordered that mandate issue to the said district court of the United States for the eastern district of Pennsylvania in accordance with the opinion and decree of this court in said cause.

GEO. M. DALLAS, *Cir. Judge.*

47 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the district court of the United States for the eastern district of Pennsylvania, Greeting:

Whereas, lately in the district court of the United States for the eastern district of Pennsylvania, before you, or some of you, in a cause between The Scottish Union and National Insurance Company, respondents-appellants and Peter Hagen and Edward F. Martin libellants-appellees, wherein the decree of the said district court entered in said cause is in the following words viz:

"And now, November 7, 1899, the above cause having been heard upon the pleadings and depositions and arguments of proctors for

the respective parties thereon, it is ordered and decreed that the libel be sustained and that Peter Hagen and Edward F. Martin the libellants shall recover from The Scottish Union and National Insurance Company the respondents the sum of $1,635.27, being the sum of $1,533.33; the amount claimed in the libel with interest thereon to date,"

48 as by the inspection of the transcript of the record of the said district court, which was brought into the United States circuit court of appeals for the third circuit by virtue of an appeal agreeably to the act of Congress, in such case made and provided, fully and at large appears.

49 And whereas, in the present term of March, in the year of our Lord one thousand nine hundred, the said cause came on to be heard before the said United States circuit court of appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said district court in this cause, be, and the same is hereby reversed with costs, and that the said respondents, The Scottish Union and National Insurance Company, recover against the said libellants Peter Hagen and Edward F. Martin, sixty-one dollars for its costs herein expended and have execution therefor.

And it is further ordered that this cause be remanded to the said district court with directions to enter a decree dismissing the libel with costs.

Philadelphia June 4th 1900.

50 You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity with the opinion and decree of this court as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, at Philadelphia, the fifth day of July, in the year of our Lord one thousand nine hundred *and ninety.*

Costs of Appellant.

Clerk	$19.00
Printing record	22.00
Attorney	20.00
	$61.00

WM. H. MERRICK,
Clerk of the U. S. Circuit Court of Appeals, Third Circuit.

[Endorsed:] U. S. circuit court of appeals, third circuit. No. 5, March term, 1900. Scottish Union and National Insurance Co. appellant *vs.* Peter Hagen and Edward F. Martin. Mandate. Filed July 5, 1900. Wm. H. Merrick, clerk.

51 United States Circuit Court of Appeals, Third Circuit, March Term, 1900.

Costs of Scottish Union and National Insurance Company in No. 5.

1900, March term—Docketing cause and filing record, $5.00; appearance, .25; filing precipe and receipt, 50c.; filing papers, $1.00	6 75
Filing briefs, $5.00; argument, .20; judgment, $1.00; filing same, .25; recording, .40; mandate, $5.00; preparing record for printer, etc., $4.00; cost of printing record, $18.00; attorney's docket fee, $20.00; costs and copy, .40	54 25
	61 00

Fee Book 2, page 266.

Test: WM. H. MERRICK,
Clerk Circuit Court of Appeals, 3d Circuit.

52 UNITED STATES OF AMERICA, *sct:*

I, William H. Merrick, clerk of the United States circuit court of appeals, for the third circuit, do hereby certify the foregoing pages from one to fifty-one inclusive, to contain a full, true, complete and faithful copy of the original transcript of record in the case wherein The Scottish Union and National Insurance Company, is appellant, and Peter Hagan and Edward F. Martin, are appellees, No. 5 March term 1900; on file, and now remaining among the records of the said court, in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-sixth day of November in the year of our Lord one thousand nine hundred and of the Independence of the United States the one hundred and twenty-fifth.

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

53 [Endorsed:] File No. 17,985. U. S. C. C. of appeals, 3rd circuit. Term No. 206. Peter Hagan and Edward F. Martin—petitioners—*vs.* The Scottish Union and National Insurance Company. Filed December 8, 1900.

54 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the third circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which The Scottish Union and National Insurance Company is appellant and Peter Hagan and Edward F. Martin are appellees which suit was removed into the said circuit court of appeals by virtue of

an appeal from the district court of the United States for the eastern district of Pennsylvania, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed
55 into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the eighteenth day of December, in the year of our Lord one thousand nine hundred.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

56 [Endorsed:] File No. 17,985. Supreme Court of the United States. No. 500, October term, 1900. Peter Hagan and Edward F. Martin, *vs.* The Scottish Union and National Insurance Co. Writ of certiorari.

57 Circuit Court of Appeals, Third Circuit, March Term, 1900.

SCOTTISH UNION & NATIONAL INSURANCE COMPANY, Appellants,
vs.
HAGAN ET AL., Appellees. } No. 6.

It is hereby agreed that the certified copy of the transcript of the record in this case, now on file in the office of the clerk of the Supreme Court shall be taken as a return to the writ of certiorari issued by the said Supreme Court to the circuit court of appeals for the third circuit, being No. 500 of October term 1900.

HORACE L. CHEYNEY,
JOHN F. LEWIS,
Proctors for Hagan et al., Petitioners.
HENRY R. EDMUNDS,
Proctor for Scottish Union & National Insurance Co., Respondent.

[Endorsed:] 6 March T. 1900 C. C. A. 3rd cir. Scottish Union &c. appellant *v.* Hagan *et al.* appellees. Agreement as to return to writ of certiorari.

58 UNITED STATES OF AMERICA, *set:*

I, —— ——, clerk of the United States circuit court of appeals, for the third circuit, by virtue of the foregoing writ of certiorari and in obedience thereto do hereby certify to the Supreme Court of the United States the consent of the counsel for the respective parties thereto as my return to the said writ.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this 28th day of December in the year of our Lord one thousand nine hundred and of the Independence of the United States the one hundred and twenty-fifth.

Seal United States Circuit Court of Appeals, Third Circuit.

WM. H. MERRICK,
Clerk U. S. Circuit Court of Appeals, Third Circuit.

[Endorsed:] No. 6, March term, 1900. United States circuit court of appeals, third circuit. Scottish Union and National Insurance Co. appellants *v.* Peter Hagan and Edward F. Martin appellees. Certified copy. Agreement of counsel as to return of writ of certiorari.

59 [Endorsed:] File No. 17,985. Supreme Court U. S. October term, 1901. Term No. 206. Peter Hagan *et al.* petitioners *vs.* The Scottish Union & National Insurance Company. Writ of certiorari and return. Filed Dec. 29, 1900.